
A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that many people in the
2 State are unaware of their rights when interacting with law
3 enforcement officers. A specific area of concern is a law
4 enforcement officer's power to search a person without a search
5 warrant.

6 The purpose of this Act is to require law enforcement
7 officers without a search warrant to obtain a person's voluntary
8 and informed consent, thereby protecting law enforcement
9 officers from false claims of wrongdoing and ensuring the
10 efficiency and effectiveness of the State's criminal justice
11 system.

12 SECTION 2. Chapter 803, Hawaii Revised Statutes, is
13 amended by amending its title to read as follows:

14 "PART III. ~~[SEARCH WARRANTS]~~ SEARCHES AND SEIZURES"

15 SECTION 3. Chapter 803, Hawaii Revised Statutes, is
16 amended by adding a new section to part III to be appropriately
17 designated and to read as follows:



1 "§803- Searches without a search warrant; voluntary and
2 informed consent. (a) A law enforcement officer or officer of
3 justice shall request and obtain a person's voluntary and
4 informed consent prior to conducting a search of the person, the
5 person's belongings, the person's residence, or the person's
6 vehicle if the search is not pursuant to a search warrant. An
7 officer obtains voluntary and informed consent from a person if
8 the officer:

9 (1) Requests the search in a language and manner
10 understood by the person;

11 (2) Informs the person that the person has the right to
12 refuse consent or withdraw consent at any time before
13 or during the search; and

14 (3) Creates an audio or written and signed record of the
15 person's voluntary and informed consent, including a
16 statement that the person is voluntarily providing
17 informed consent to the officer and that the person
18 understands that the person may refuse consent or
19 withdraw consent at any time before or during the
20 search.



1 (b) At the conclusion of a search without a search warrant
2 under subsection (a), the law enforcement officer or officer of
3 justice who conducts the search shall provide the person with a
4 copy of the proof of consent and any additional information
5 recorded or written and a copy of a record of the following:

6 (1) Time, location, and date of the search;

7 (2) Whether a vehicle or residence was involved;

8 (3) Description of the search and any item that was
9 seized;

10 (4) Race, ethnicity, gender, and age of the person who
11 consented to the search; and

12 (5) Name and badge number of all law enforcement officers
13 or officers of justice involved in the search.

14 (c) If during a legal proceeding a person moves to
15 suppress evidence obtained through a search purportedly
16 conducted pursuant to this section, an officer's failure to
17 comply with subsection (a) shall be considered a factor in
18 determining the voluntary and informed nature of the consent.

19 (d) This section shall not apply to a search of a person
20 by a law enforcement officer or officer of justice who has
21 probable cause to believe that the person is armed and presents



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1 a danger to the officer's safety in the course of the officer's
2 investigation."

3 SECTION 4. If any provision of this Act, or the
4 application thereof to any person or circumstance, is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 5. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 6. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval.

15
INTRODUCED BY:

Richard Luy BR

JAN 23 2015



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Report Title:

Law Enforcement Search Powers; Voluntary and Informed Consent

Description:

Requires law enforcement officers and officers of justice to request and obtain a person's voluntary and informed consent prior to conducting a search of the person, the person's belongings, the person's residence, or the person's vehicle when conducting the search without a search warrant. Provides an exception for law enforcement officers or officers of justice who have probable cause to believe that a person is armed and presents a danger to the officer's safety.

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